IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 27620 of 2007(K)

PETITIONER:

JOMON JOSEPH, THOTTUNGAL HOUSE,
KARIMKUNNAM,THODUPUZHA,PROPRIETOR,
M/S.THOTTUNGAL EXPORTS,KARIMKUNNAM,
THODUPUZHA.

BY ADV. SRI.JOMY GEORGE

RESPONDENTS:

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1. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KATTAPANA,IDUKKI.

2. STATE OF KERALA REPRESENTED BY ITS
SECRETARY,TAXES DEPARTMENT,GOVERNMENT
SECRETRIAT,THIRUVANANTHAPURAM.

BY G.P. SRI.SREEKRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON 17/09/2007 DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.27620 of 2007

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Dated this the 17th day of September, 2007.

JUDGMENT

The petitioner is challenging Ext.P5 order demanding tax and interest for May 2007. According to the petitioner, the transaction assessed for May 2007 is an export sale of marble. The documents produced show that the goods namely, marble are procured from Rajasthan and shipment is from Bombay. Obviously transactions are not to be accounted in Kerala. If petitioner has no business in Kerala except export from Bombay, then petitioner is not entitled to hold a registration under the KVAT Act. Since granting of registration, filing of return etc. are under mistake, I dispose of the W.P. directing first respondent to examine whether petitioner has any local purchase and sales in Kerala warranting retention of registration under the KVAT Act and if not, to forthwith cancel registration. Having regard to the facts stated and in view of the direction above, there will be direction to the first respondent to reconsider Ext.P5 order with reference to the documents to be produced by petitioner and if purchase and sale has not taken place in Kerala, he will recall Ext.P5. The first respondent is directed to pass final orders both on Ext.P5 and on petitioner's entitlement

to retain registration within one month from now. There will be direction to the respondents not to proceed for any recovery for one month. Recovery thereafter will be based on fresh orders to be issued by first respondent.

C.N.RAMACHANDRAN NAIR
Judge

pms